



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL DIVISION

HIGH COURT CIVIL APPEAL NO. 354 OF 2006

ROCKMASTERS LIMITED.....APPELLANT

VERSUS

ISAAC KABUE MIRINGU.....RESPONDENT

RULING

1. The application date 28th November, 2018 seeks order as follows:

“1. That the Honourable Court do clarify its Judgment dated 22nd February, 2017.

2. That the Honourable Court do clarify

(i) Whether by setting aside the judgment of the lower court the court set aside the lower court’s judgment on interest and costs in the lower court or only on the issues the subject of appeal

(ii) Whether the judgement indicating that the lower court judgment was substituted with this court’s judgment only applied to loss of earning capacity.

(iii) Whether having dismissed the Appellant’s Appeal on general damages and the said damages not having been paid since the delivery of judgment by the lower court whether the said award accrues interest from the date of judgment of the lower court or not.

(iv) Whether the substituted award on lost capacity to earn in future carries interest from the date of Judgment of the lower court or not.”

2. It is stated in the grounds and the affidavit in support of the application that the judgment herein delivered on 22nd February, 2017 did not come out clearly on the final orders vis-a-viz the lower court judgment

3. The application is opposed. It is stated in the replying affidavit that the application has no merits and is an abuse of the court process as the judgment in question is clear and requires no interpretation. It is further stated that the decretal sum has been deposited in court pending the hearing and determination of appeal in the Court Appeal.

4. I have considered the application and the reply to the same.

5. I have re-looked at the judgment delivered herein on 22nd February, 2017.

- Paragraph 22 thereof reflects that the award on loss of earning capacity is Ksh.500,000/=
- Paragraph 23 sets aside the award of the lower court of Ksh.175,800/=.
- Paragraph 26 sets aside the award of the lower court of Ksh.1,280,160/=
- Paragraph 26 reflects the total award comes to Ksh.500,000/= (Loss of earning capacity) and Ksh.550,000/= (General damages) which comes to Ksh.1,050,000/=

- The lower court awarded costs and interest to the Plaintiff (Respondent). This was not interfered with by this court.

6. With the foregoing, I find no merits in the application and dismiss the same with costs.

Dated, signed and delivered in Nairobi this 30th day of May, 2019

B. THURANIRA JADEN

JUDGE